

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

WAYNE WALTON,

Plaintiff,

v.

THE STATE OF WASHINGTON *et al.*,

Defendants,

Case No. C05-5545RJB

REPORT AND  
RECOMMENDATION

**NOTED FOR:  
November 18<sup>th</sup>, 2005**

This Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636 (b)(1)(B) and Local Magistrates' Rules MJR 3 and MJR 4. Plaintiff was ordered to file an amended complaint. (Dkt. # 5). That order was entered because the original complaint did not name any person as a defendant, only state agencies and the state itself. (Dkt. # 4). Thus, the complaint fails to state a claim.

The order gave plaintiff until October 7<sup>th</sup>, 2005 to file an amended complaint. (Dkt. # 5). As of October 27<sup>th</sup>, 2005 nothing has been filed.

The court now recommends that this action be **DISMISSED WITH PREJUDICE** for failure to state a claim, lack of prosecution and for failure to comply with court orders. Dismissal for failure to state a claim counts as a strike pursuant to 28 U.S.C. § 1915 (g).

CONCLUSION

The court should dismiss this complaint with prejudice. Petitioner cannot state a claim against the named defendants as the defendants are not persons within the meaning of 42 U.S.C. § 1983. Further, plaintiff has not responded to a court order to amend the complaint and has failed to properly prosecute the action. A proposed order accompanies this Report and Recommendation.

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on **November 18<sup>th</sup>, 2005**, as noted in the caption.

DATED this 31<sup>st</sup> day of October, 2005.

/s/ J. Kelley Arnold  
J. Kelley Arnold  
United States Magistrate Judge